

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Criminal No. 7:07-CR-69-FL
Civil No. 7:12-CV-61-FL
Civil No. 7:16-CV-201-FL

JERRY GLENDON MODISETTE,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)


ORDER

This matter is before the court on petitioner's status report (DE 93), submitted in response to the court's November 30, 2018, order. Based on the status report, as well as petitioner's earlier motion to appoint counsel, which the court collectively construes as a motion to vacate the court's prior post-conviction orders due to identified conflict, the court VACATES its November 12, 2013 (DE 56), and November 6, 2015 (DE 70), orders entered in this matter, pursuant to Federal Rule Civil Procedure 60(b)(6). See Gonzalez v. Crosby, 545 U.S. 524, 532 (2005) (holding Rule 60(b) relief is appropriate in habeas proceeding where movant demonstrates a "defect in the integrity of the federal habeas proceedings"). The clerk is DIRECTED to reopen for decision petitioner's § 2255 motion (DE 43) and motion to reduce sentence (DE 44).

The court accordingly will make a decision, de novo, on petitioner's § 2255 motion (DE 43) and motion to reduce sentence (DE 44) based on previously-filed briefing on the motions. The court will also address petitioner's pending motion to reduce sentence (DE 90). However, before doing so, the court requests the parties' positions on whether further briefing or hearing is required prior to resolving any of the motions (DE 43, 44, 90). Accordingly, petitioner, through appointed counsel,

is DIRECTED to file a response to this order, within **14 days** hereof, specifying whether any additional briefing on the pending motions is desired, and the proposed form and time frame of such. The government may file a reply, if any, to petitioner's proposal, within **14 days** of receipt of petitioner's response. In the event the parties agree that further briefing will be necessary, the parties shall file a joint response, with proposed order, within **14 days** of this order.

SO ORDERED, this the 11th day of January, 2019.



LOUISE W. FLANAGAN
United States District Judge